

### **REMARKS**

These remarks are in response to the Office Action dated August 27, 2007. This response is filed with a request for a two-month extension of time, and authorization to charge Deposit Account No. 50-0951 for the appropriate fees.

At the time of the Office Action, claims 1-7 were pending in the application. In the Office Action, claims 1-7 are rejected under 35 U.S.C. §103(a). The rejections are discussed in more detail below.

#### **I. Rejections to the claims based upon Art and Allowable Subject Matter**

Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,676,938 to Kimura et al. ("Kimura") in view of U.S. Patent No. 5,085,859 to Halloran ("Halloran") and further in view of European Patent No. 1116753 to Kanemaru et al. ("Kanemaru"). Applicant submits that claim 1 is patentable over these references.

As discussed in the response to the prior Office Action, the chemical formula of the silicone resin of Kimura differs from the chemical formula of the silsesquioxane homopolymer and/or copolymer of claim 1 in that the silicone resin of Kimura does not contain hydroxyl or alkoxy functional groups. Moreover, in the cosmetic powder of claim 1, the presence of such hydroxyl or alkoxy functional groups is essential in order to allow the networking and the hooking of the silsesquioxane coating phase onto the surface of the powders as stated in the present application on page 4, lines 5-6. Furthermore, the presence of said hydroxyl or alkoxy functional groups in the silsesquioxane coating phase of claim 1 provides the technical effect of allowing the coating phase to coat the powder and the pigments by creating a thin (film), with physical properties which mirror the properties of the coating, i.e. flexibility, elasticity, film softness which does not crack (present application, page 5, lines 29-30, page 6 lines 1,2). Moreover, the hydroxyl or alkoxy functional groups further allows the hooking of the cosmetic powder of the present application on the complementary structure of the skin surface (i.e. the derma) on which the cosmetic powder is applied thus making the cosmetic powder of the present application flexible to

the movements of the derma itself. Due to the above mentioned technical effects a dry skin feel is also perceived (present application, page 6, lines 8-9).

Furthermore, in Kimura, the presence of powdery materials is not essential. Kimura clearly teaches that powdery materials “may” be added to the cosmetic composition (Kimura, col. 6, lines 28-30). Moreover, the silicon resin of Kimura does not coat such powdery material. In the “composition table” of Example 13, in which powders are present in the composition, it is evident that the silicon resin does not coat the powders, and instead is simply mixed with them (Kimura, Example 13, composition table, col. 15, lines 45-55).

Kanemaru describes a silicone treated powder composed of a powder coated on the surface thereof with a silicone compound, in which an amount of hydrogen generated by Si-H groups remained on the surface of the silicone-treated powder is not more than 0.2 ml/g of treated powder and a contact angle of water with the treated powder is at least 100°. In Kanemaru, the monomers are polymerized *in situ*, (i.e. directly on the surface of the various powder by a heat treatment). In contrast, in claim 1 of the present application, the powder phase is individually coated by a still preformed silsesquioxane polymer having the specific chemical formula set forth above. Therefore, in claim 1, the powder is individually impregnated by spraying the above silsesquioxane polymer previously prepared by mixing it with a suitable solvent (present invention, page 4, lines 21-25). Furthermore, no mention has been made by Kanemaru of the presence of hydroxyl or alkoxy functional groups in the polymer obtained by the heat treatment process of Kanemaru.

It should be noted that present invention deals with providing a cosmetic powder wherein the powder is coated by a coating phase that allows to coat the powder and the pigments by creating a thin layer (film) with physical properties which mirror the properties of the coating, i.e. flexibility, elasticity, film softness which does not crack (present application, page 5, lines 29-30, page 6, lines 1-2). In such a manner, the contact between the powder and the skin surface is also prevented, avoiding dehydration effects and meanwhile generating a good sensory effect (present application, page 2, lines 12-15). This is achieved by selecting a specific silsesquioxane polymer for the coating phase containing hydroxyl or alkoxy functional groups. The specific polymers are set out in claim 1.

The only cited prior art document that describes a cosmetic composition system which contains both a powder phase and a coating phase of said powder phase is Kanemaru (see discussion above). However, the coating phase polymer obtained by the polymerization heat treatment process of Kanemaru is not suitable to solve the problem of the present application. Indeed, as clearly described by Kanemaru, the polymerization heating process of the monomers of formula  $(R^1HSiO)_a(R^2R^3SiO)_b(R^4R^5R^6SiO_{1/2})_c$ , wherein  $R^1$ ,  $R^2$ ,  $R^3$ ,  $R^4$ ,  $R^5$  and  $R^6$  have the meaning stated in Kanemaru at page 3, lines 55-56 and page 4, lines 1-10, leads to a polymer that does not contain hydroxyl or alkoxy functional groups. Moreover, the *in situ* polymerization process of Kanemaru leads to a cosmetic composition that contains  $H_2$  on the surface of the silicon treated powder. The presence of  $H_2$  on the surface of the silicon treated powder has the disadvantage that the cosmetic container may swell with the elapse of time after filling the product into containers, and the product may harden and crack.

Turning now to the newly cited reference, Halloran, this reference describes a hair fixative composition and improved methods for providing curl retention to hair. The composition of Halloran comprises a mixture of at least one solvent and a film forming material which is an interpenetrating polymer network. Halloran teaches that said interpenetrating polymer network includes a nonpolar silsesquioxane and a substituted vinyl copolymer (Halloran, claim 1 and col. 9, lines 1-16). Therefore, the composition of Halloran is formed by three essential components: a solvent (usually an alcohol, such as ethanol or a mixture of an alcohol and water (Halloran, col. 1, lines 42-45, Examples II and V) and two polymers which form the interpenetrating polymer, i.e. the vinyl copolymer and the nonpolar silsesquioxane. No mention is made by Halloran of the presence of a powder phase. To the contrary, the composition of Halloran is in form of an ethanol solution or gel or lotion (Halloran, Examples and col. 12, lines 45-46).

In contrast, the cosmetic composition of claim 1 is formed by two essential components, i.e. a powder phase and a coating phase formed by a specific silsesquioxane. In particular, the powder phase in the composition of the invention is present in a large amount. Indeed, said powder phase is present in an amount of 0.1 - 99,9% b.w. (present application, claim 2), preferably in an amount of 80-99% b.w. (present application, claim 3). Furthermore, the silsesquioxane homopolymers and/or copolymer in the composition of the present invention network and hook on

said powder phase, by partially or totally modifying the physic-chemical properties, making them highly hydrophobic and highly skin adhesive, hence particularly suitable for cosmetic formulation such as foundations, fards, eye shadows and lipsticks (present invention, page 3, lines 1-6).

Halloran mentions in general the presence of hydroxyl and alkoxy derivatives of the nonpolar silsesquioxane in the interpenetrating polymer. In fact, the nonpolar silsesquioxane of Halloran can be a hydroxyl or an alkoxy derivative as well as an aryloxy or an alkenoxy one. In contrast, claim 1 of the present application recites a specific range of the hydroxyl or alkoxy content in the silsesquioxane homopolymers and/or copolymer that form the coating of the powder phase. The coating phase is formed by silsesquioxane having a hydroxyl or alkoxy content from 0.2 to 10% by weight. A person of ordinary skill in the art faced with the problem of providing a cosmetic powder in which the powder is coated by a coating phase that allows to coat the powder and the pigments by creating a thin layer with physical properties which mirror the properties of the coating would not find any teaching or suggestion in the cited prior art which would prompt the modification of the chemical structure of the compounds described in the cited prior art in order to select the specific silsesquioxane polymer for the coating phase for a powder phase set forth in claim 1 of the present application. For the reasons stated above, claim 1 is in condition for allowance. The dependent claims are also allowable because of their dependence on an allowable base claim, and because of the further features recited therein.

## **II. Conclusion**

Applicants have made every effort to present claims which distinguish over the prior art, and it is thus believed that all claims are in condition for allowance. Nevertheless, Applicants

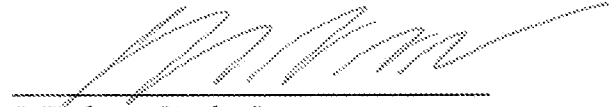
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invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicants respectfully request reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

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